

From: Becky Contos [becky@dingthinking.com]

Sent: Monday, March 14, 2005 1:38 PM

To: restructure.sizestandards@sba.gov

Subject: RIN 3245-ZA02

Mr. Gary Jackson

Assistant Administrator for Size Standards

Small Business Administration

409 Third Street S.W.

Mail Code 6530

Washington, DC 20416

Dear Mr. Jackson,

Subject: RIN 3245-ZA02

Selected Size Standard Issues

This letter is in response to the SBA's Advance Notice of Rulemaking that highlights 10 issues relating to size standards. I am concerned that not one of the proposed changes by the SBA addresses the single most important issue, which is the fact that most small business contracts go to large businesses.

A number of the issues being proposed by the SBA will benefit large businesses. Exclusions for VCC, exclusions for franchises and grandfathering are not in the best interest of small businesses. A significant role of the SBA is to assist small businesses in the federal contracting program established for small businesses. Yet the SBA continues to propose rules, regulations and changes that make it more difficult for true small businesses to be competitive in the federal small business-contracting arena.

Here are some of the changes that I think would help small businesses:

1. **Return the definition of small business back to 100 employees.** 98% of all U.S. firms have less than 100 employees and 89% have less than 20 employees. In 1985 the SBA increased the small business size standard for non-manufacturers from 100 to 500. ASBL prompted the SBA to propose reducing the small business size standard back to 100 and the SBA received an unprecedented and overwhelming public support for this change.
2. **Abolish any federal policy** that gives special preference to Alaskan Native Corporations that would not be given to any other small or minority business.
3. **Enforce “Liquidated Damages” and all other existing federal laws** for non-compliance with small business goals for prime contractors. The law requiring prime contractors to pay “Liquidated Damages” for failure to make a good faith effort to reach their small business subcontracting goals has NEVER been enforced. As a result most prime contractors never achieve the small business goals stated in their government prime contracts.
4. **Remove any and all exemptions** to the \$100,000 small business set-aside. Congress passed legislation mandating all federal acquisitions between \$2500 and \$100,000 to be automatically set-aside for small business. The SBA and the FAR Council essentially repealed this valuable piece of legislation by exempting all federal acquisitions that were on GSA schedule from this policy.
5. **Eliminate the “Comprehensive Test Program.”** The Comprehensive Test Program allows major prime contractors to avoid complying with their small business goals by eliminating specific small business reporting on individual contracts. It also eliminates Liquidated Damages. Once reporting and penalties are eliminated the prime contractors have no incentive to reach their small business goals.
6. **Eliminate the Non-Manufacture rule.** This policy states that unless a small business is providing the goods and services of another small business, they are not a small business. This policy has no benefit to small businesses and is routinely used by the SBA and fraudulent firms to protect themselves against protests and litigation by saying the complaining small business has no grounds to take any action against the fraudulent firms since they are not a small business according to the Non-Manufacture Rule.
7. **Require all government suppliers claiming status as a small business to recertify on an annual basis.** This can be done easily and efficiently on-line. Any and all government

databases for small business should clearly state the penalties for misrepresentation.

8. The SBA should publish a list of firms that have been removed from CCR in the past for misrepresentation and add firms to the list monthly that lose their small business status through protests. This list should be provided to all government buyers and all prime contractors.

9. File class action law suits against firms that have received federal contracts and subcontracts for falsely claiming to be small businesses. Some firms have fraudulently claimed small business status for over a decade and illegally received billions in federal contracts and subcontracts. It may be possible to receive several billion dollars in damages from these firms that would go the legitimate small businesses that were harmed by their illegal actions.

10. Establish a workable system of penalties and rewards to encourage federal agencies to comply with congressionally mandated small business goals.

Research conducted by the General Accountability Office, the Center for Public Integrity and the SBA's own Office of Advocacy reveals that a substantial portion of federal small business contracts are currently going to some of the largest companies in the U.S. Effective immediately, the SBA should reverse any current policy, loophole, or rule that allows large businesses, subsidiaries of large businesses, affiliates of large businesses and publicly traded companies to receive contracts that are counted as small business contracts. The SBA needs to enforce the current laws (including 16d) that require the punishment of firms misrepresenting their small business status. In addition, action needs to be taken against the individuals/agencies that are part of this "miscoding and computer glitches" that helps them fraudulently reach their small business goals.

Response to the SBA's Issues for Comment:

1) Are the current size standards difficult to understand?

No. The size standards are not difficult to understand. However, the larger issue is the SBA's lack of enforcement of the laws requiring punishment of firms for misrepresenting their small business size standard status.

2) What are alternatives to the current methods of calculating the employment size of a business?

Both full and part time employees should be used in calculating employment size. I agree with using FTEs to calculate the number of employees over the preceding 12 months.

3) Should the SBA continue to use receipts-based size standards or establish size standards based exclusively on number of employees?

Size standards should be based upon number of employees and receipt based size standards

4) Should the current process for applying size standards to Federal procurements be modified? Should a separate set of size standards be established specifically for Federal procurement or would this needlessly complicate size standards?

No. I do not support establishing separate size standards for Federal procurements. This will further complicate using size standards.

5) Should the SBA establish a tiered system of size standards?

No. Adding a tiered system will just complicate the size standards structure. It will also further limit opportunities for small businesses. Small businesses will only be able to compete for opportunities within a smaller range of classification.

6) What are ways to clarify the SBA's affiliation regulations?

I agree with the SBA's current affiliation regulations.

I am against allowing exemptions for franchisees. This exemption gives franchisors too much control over their franchisees and gives them a competitive advantage over independent businesses. This exemption will set a precedent for all industries to the detriment of true independently owned and operated businesses.

7) Should the SBA continue using its joint venture eligibility criteria?

I agree with the SBA's policy of allowing small businesses to use joint ventures if done so in a legal manner.

8) What are the approaches the SBA could take to "grandfather" small businesses that may be adversely impacted by any future restructuring?

"Grandfathering" should not be allowed. Currently, significant small business dollars are being awarded to large businesses. "Grandfathering" will allow large businesses to continue to tie up billions of dollars of small business contracts to the detriment of legitimate small businesses. Billion dollar firms do not need help leaving the small business program.

10) Should the SBA provide an exclusion from affiliation for venture capital companies (VCC) in size determinations for eligibility for the SBIR Program?

No exclusion should be allowed. I agree with the current regulation that states a business concern that is majority owned by a company must include the size of the company and all its affiliates in determining small business status. By excluding the affiliation with the VCC, SBIR funds, which are reserved for small business concerns, may be used to subsidize research projects of large corporations.

The ASBL is extremely proactive in educating small businesses regarding the SBA size standard issue. The validity and impact of my letter should not be diminished or devalued because I responded with the help of a form letter by the trade association that I support. Since it is the SBA's mission to protect the interests of small businesses, I expect my letter to count as an individual response.

Thank you so much for your attention

Sincerely,

Becky Contos @

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